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P. E. MYERS & ASSOCIATES

Practice Before The Interstate Commerce Commission

SUITE 348, PENNSYLVANIA BUILDING

1425 THIRTEENTH STREET, N.W.

WASHINGTON, D. C. 20004

(202) 737-2188

December 22, 1982

INTERSTATE COMMERCE COMMISSION

Registered Practitioners

PAULINE E. MYERS

MARK D. RUSSELL

RECORDATION NO. 13876A Filed 1425

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

DEC 22 1982-9 11 AM
INTERSTATE COMMERCE COMMISSION
DEC 22 1982-9 11 AM
INTERSTATE COMMERCE COMMISSION
RECORDATION NO. 13876B Filed 1425

In Re: Documents for Recordation
Dear Mrs. Mergenovich:

I have enclosed an original and one copy/counterpart of the documents described below, to be recorded pursuant to Section 11303 of Title 49 US Code.

1. Mortgage of Railroad Car:
Mortgagor: San Diego Club Associates
157 Milton Road
Rye, NY 10580

Mortgagee: Third National Bank & Trust Company of Scranton
130 Wyoming Avenue
Scranton, PA 18501

Description: 1 - Pullman Standard Business Car No. 3250
manufactured in 1950.
2. Equipment Lease:
Lessor: San Diego Club Associates
(Address as above)
Lessee: Genesee & Wyoming Railroad Company
3846 Retsof Road
Retsof, NY 14539
3. Agreement of Assignment of Lease:
Borrower: San Diego Club Associates
(Address as above)

Bank: Third National Bank & Trust Company of Scranton
(Address as above)

Tenant: Genesee & Wyoming Railroad Company
(Address as above)
4. Assignment Agreement:
Assignor: San Diego Club Associates
(Address as above)

Assignee: Third National Bank & Trust Company of Scranton
(Address as above)

A fee of \$120.00 is enclosed. Please return the original. Your cooperation in this matter is greatly appreciated.

Yours very truly,

Pauline E. Myers

PEM/s

Enclosures:

4 Documents

Check No. 4231

Interstate Commerce Commission

Washington, D.C. 20423

12/22/82

OFFICE OF THE SECRETARY

**Pauline E. Myers & Assoc.
Suite 348, Pennsylvania Building
425 13th St. N.W.
Washington, D.C. 20004**

Dear Ms. Myers:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/22/82** at **9:55am**, and assigned re-recording number(s). **13876, 13876-A, 13876-B, 13876-C**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

EQUIPMENT LEASE

13876
RECORDATION NO. Filed 1425

DEC 22 1982-9 55 AM

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT LEASE AGREEMENT ("Agreement") is made and entered into this 22nd day of November, 1982, by and between SAN DIEGO CLUB ASSOCIATES, a general partnership under the laws of the state of New York ("Lessor") and the Genesee and Wyoming Railroad Company, a New York Corporation ("Lessee").

IT IS HEREBY AGREED BY AND BETWEEN LESSOR AND LESSEE AS FOLLOWS:

1. LEASING.

In consideration of the covenants herein contained, Lessor leases to Lessee and Lessee leases and hires from Lessor the equipment and property described in Schedule A attached hereto ("Equipment") for a term beginning on the date of this Agreement, and continuing for a period of sixty months.

2. RENT.

Lessee agrees to pay to Lessor, as rental for the use of the equipment described in Schedule A attached hereto, equal monthly payments during the first thirteen months of the Lease in the amount of \$2,200.00 each payable in advance on the first (1st) day of each month beginning December 1, 1982 and equal monthly payments during the remaining forty-seven months of the Lease in the amount of \$2,017.00 each payable in advance on the first (1st) day of each month beginning January 1, 1984.

3. ATTACHMENTS, ETC..

All equipment, improvements, attachments, accessories and repairs at any time made to or placed upon the equipment or property leased or to be leased shall become a part thereof and become the property of

Lessor.

4. RISK OF LOSS AND INSURANCE.

After delivery of the Equipment to Lessee and its acceptance by Lessee, and until redelivery thereof to Lessor as provided herein, any and all risk of loss or damage to the Equipment shall be borne by Lessee. The Lessor agrees to purchase insurance coverage upon the Equipment in such amounts and insuring against such risks as is normal or usual in the industry or business in which the Lessee is engaged and to name itself and the Lessee as insureds thereunder, as each of their interests shall appear.

5. DAMAGE.

In the event the Equipment is damaged, the monthly rental allocable therefore shall continue to be paid by Lessee, notwithstanding such damage. Lessee shall forthwith repair or cause the Equipment to be repaired.

6. DESTRUCTION.

In the event the Equipment is totally destroyed, or is damaged to such an extent that Lessee finds it undesirable or impossible to make repairs necessary for its continued use, Lessee shall, at Lessor's option, (a) using insurance proceeds, replace the Equipment with equipment of like value, acceptable to Lessor, in which case rent payments shall not be affected; or (b) cancel this Agreement and Lessee shall pay to Lessor the full amount of the exercise Lessee's option to purchase the Equipment under the same proceeds of any insurance covering the property.

7. INDEMNIFICATION.

Lessee agrees to indemnify, protect, save and keep harmless,

Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatsoever nature, arising out of the use, condition (including but not limited to, patent and other defects and whether or not discoverable by it), or operation of any piece of Equipment leased hereunder by whomsoever used or operated. In the event Lessee sub-leases the Equipment, it shall require any sub-lessee to insure and Lessor on the same basis as the Lessee's indemnification above and furthermore to have Lessor named as an insured under any sub-lessee's policy.

8. TAXES.

Lessee shall pay all taxes, fees, and assessments, however designated, levied, or based upon the rentals, or upon this Agreement or the Equipment, including but not limited to, any sales or use taxes, any personal property taxes, or any penalties or interest assessed against Lessor for the failure to collect any such taxes from Lessee, or any taxes, fees, and assessments or amounts assessed in lieu thereof paid or payable by Lessor in respect of the foregoing, exclusive of any income or other business taxes measured by the net income of Lessor in respect of the foregoing, exclusive of any income or other business taxes measured by the net income of Lessor. Lessee shall promptly notify Lessor regarding any tax notices, tax reports, inquiries from taxing authorities concerning taxes, fees, assessments and amounts in lieu thereof, referred to herein.

9. ASSIGNMENT BY LESSEE.

Lessee may assign its rights under this Agreement or may sublet any equipment leased hereunder only upon prior written consent of

Lessor.

10. TITLE.

✓ Title to each piece of Equipment leased hereunder shall remain in Lessor.

11. LESSOR OBLIGATIONS.

During the term hereof, Lessor shall be obligated to perform the following:

- A. Deliver the Equipment to Lessee at Tucson, Arizona FOB Rail Passenger Services, Inc., 4744 North Campbell Avenue, Tucson, Arizona.
- B. Purchase a property damage and liability insurance policy satisfactory to the Lessee as described in Paragraph 4.
- C. Pay all the costs of maintaining the Equipment at Lessee's facilities in Retsof, New York. The costs of maintenance shall include only normal maintenance costs while the Equipment is standing at Lessee's facility and shall not include capital items or costs incurred while the Lessee or its Sub-Lessees are using or moving the Equipment. Lessor shall bear such costs during the first thirteen (13) months of this Agreement after which time Lessor and Lessee shall review the above costs and renegotiate the maintenance provisions of this Agreement.
- D. Lessor shall be responsible for all of its legal, administrative and accounting expenses relative to this Lease and the Equipment thereunder. Lessee shall have the right to reasonably sublet the Equipment and shall bear its own costs relative to any sub-leases.

12. NOTICE OF OWNERSHIP.

Lessor shall be permitted to display notice of ownership of the equipment by means of a stencil, plate, or any other suitable means affixed to the equipment.

13. EVENTS OF DEFAULT.

In addition to events provided for elsewhere in this Agreement, any of the following events or conditions shall constitute an event of default hereunder and shall allow Lessor, at its sole option, to terminate this Agreement.

- (a) Nonpayment of any rent or other amount provided for in this Agreement for ten (10) days after the same becomes due, or default by Lessee in the performance of any other obligation, term or condition of this Agreement;
- (b) If any writ or order of attachment or execution or other legal process is levied on or charged against any or all of the Equipment and is not released or satisfied within ten (10) days;
- (c) The filing by or against Lessee of a petition for adjudication as a bankrupt; the filing by or against Lessee of a petition for reorganization under the Bankruptcy Code or any similar statute; or the filing by Lessee of a petition for any arrangement under the Bankruptcy Code or any similar statute;
- (d) The making of any general assignment by Lessee for the benefit of its creditors; the appointment of a receiver or trustee for Lessee's assets; or the institution by or against Lessee of any other type of insolvency proceeding (under the Bankruptcy Code or otherwise) or of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up the affairs of Lessee.
- (e) Any default by Lessee under any other agreement with Lessor, including, but not limited to a similar Lease Agreement of even date herewith.

14. COSTS AND EXPENSES.

Except as otherwise expressly provided herein, Lessee agrees to pay Lessor all costs and expenses, including reasonable attorneys'

fees incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof.

15. WARRANTIES.

EXCEPT FOR ANY MANUFACTURER'S WARRANTIES, UPON WHICH THE MANUFACTURER ONLY SHALL BE LIABLE, AS TO THE EQUIPMENT LEASED THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF FITNESS MERCHANTABILITY OR OTHERWISE. NO DEFECT OR MALFUNCTION IN THE EQUIPMENT SHALL RELIEVE LESSEE OF ANY OBLIGATION UNDER THIS AGREEMENT. LESSOR HEREBY ASSIGNS TO LESSEE ITS RIGHTS UNDER ANY MANUFACTURER OR SUPPLIER WARRANTIES.

16. EFFECT OF TERMINATION.

The termination of this Agreement shall not affect any equipment subject hereto at the time of such termination; all such equipment shall remain subject to the terms hereof; and Lessor and Lessee shall have the mutual rights and obligations provided for herein as to such equipment.

17. FILINGS, RECORDATION.

Lessee will cooperate with Lessor in executing and filing and/or recording any notices or documents necessary to perfect and protect Lessor's interest in the Equipment.

18. MISCELLANEOUS PROVISION.

(a) Any notices pursuant to this Agreement shall be validly given or served if in writing and delivered personally or sent by registered or certified mail, return receipt requested and postage prepaid, to the addresses as indicated above, or to such other addresses as either party may hereafter designate to the other in writing. Any such notices shall be deemed to have been given when

received or receipted for by the concerned party.

(b) If any provision of this Agreement shall be or become illegal or unenforceable in whole or in part for any reason whatsoever, the remaining provisions shall nevertheless be deemed valid, binding and subsisting.

(c) This waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation thereof.

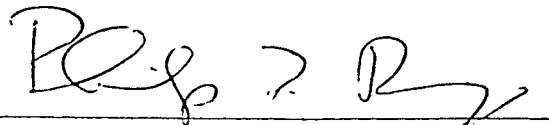
(d) This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereof; it may not be altered or amended except by an agreement in writing.

(e) This Agreement, its validity, performance and effect shall be determined in accordance with the laws of the State of New York.

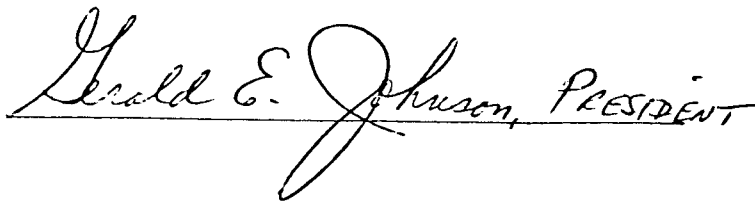
(f) The headings of paragraphs in this Agreement are for convenience only, they form no part of this Agreement and shall not affect its interpretation.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement on the day and year first above written.

LESSOR:

A handwritten signature in dark ink, appearing to be "R. J. R.", written over a horizontal line.

LESSEE:

A handwritten signature in dark ink, reading "Gerald E. Johnson, PRESIDENT", written over a horizontal line.

SCHEDULE A

Quantity	Description	Car Numbers
One	Business car manufactured by Pullman Standard in 1950 and presently known as "San Diego Club"	3250

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

On this day of December, 1982, before me personally came Gerald E. Johnson, to me personally known who, being by me duly sworn, did depose and say that he resides in Nunda, New York, that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Joan M. Pignataro
Notary Public

JOAN M. PIGNATARO
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1987

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

On this day of December, 1982, before me personally came Philip J. Ringo, to me personally known who, being by me duly sworn did depose and say that he resides at Cincinnati, Ohio; that he is a general partner of SAN DIEGO CLUB ASSOCIATES, a New York general partnership and executed the above instrument as such, that he is the duly authorized general partner of said partnership for the purpose of executing the above instrument that said instrument was signed by order of and unanimous written consent of said partnership.

Joan M. Pignataro
Notary Public

JOAN M. PIGNATARO
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1987